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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1050

HECTOR CRANDALL,
Petitioner,

vs.

ALBERTO BALLI, ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

W. C. FRANKLIN,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Short statement of the case	1
Basis of jurisdiction	4
Questions presented	9
Reasons for granting the writ	15
Appendix	18

Table of Cases Cited

Amaya, et al. v. *Stanolind Oil and Gas Co.*, 62 F. Supp. 181	16
Barker v. *Harvey*, 181 U. S. 481	16
Christy v. *Pridgeon*, 71 U. S. 204, 8 Wall. 196	15
Crandall v. *Balli*, 144 Tex. —, 190 S. W. (2d) 71	1
Elisha Basse v. *City of Brownsville, Texas*, 154 U. S. 610, 22 L. Ed. 420	13, 16
Ely's Admr. v. *U. S.*, 171 U. S. 220	15
Ker and Co. v. *Couden*, 223 U. S. 268	15

Statutes Cited

Act of Congress of:	
March 1, 1845 (5 Stat. at L. 797)	4
December 29, 1845, 9 Stat. at L. 108, Paschal's Dig., p. 45	5
Act of Congress of the Republic of Texas of June 23, 1845 (2 Gammell's Laws of Texas, 1225-1227, Paschal's Dig., Laws of Texas, p. 45, Sayles' Early Laws of Texas, Art. 1531)	5
Acts of the Texas Legislature, April 29, 1846, 2 Gammell's Laws of Texas, 1461, Paschal's Dig., Laws of Texas, Art. 441	5
Act of the Texas Legislature of February 10, 1852	11
Act of the Texas Legislature of August 15, 1870 (6 Gammell's Laws of Texas, 275, 378)	7

Page

Colonization Law of Tamaulipas of December 15, 1826, Article 11 (1 Gammell's Laws of Texas, 455, Sayles' Early Laws of Texas, Article 89) 11

Colonization law of Tamaulipas of December 15, 1826, Article 25, (1 Gammell's Laws of Texas, 458, Sayles' Early Laws of Texas Art. 89) 12

Constitution of Texas, Article 14, Section 8 ..... 8, 13, 14

Constitution of the United States:

Article III, Section 2 4

Article VI, Paragraph 2 ..... 13, 14

14th Amendment 13, 14

Gammell's Laws of Texas, Volume 1, p. 1228-1230, Paschal's Dig., p. 45 5

Judicial Code, Section 237b, as amended by the Act of February 13, 1925 (28 U. S. C. A. 344b) 4

National Colonization Law of Mexico of August 18, 1824, Article 4, Decree 72 (1 Gammell's Laws of Texas, 39 Sayles' Early Laws of Texas, Article 40) 11, 12

National Colonization Law of Mexico of August 18, 1824, Article 12, Decree No. 72 (1 Gammell's Laws of Texas, 98, Sayles' Early Laws of Texas, Art 40)

Treaty of Guadalupe-Hidalgo of February 2, 1848, Article VIII 6

Vernon's Annotated Texas Civil Statutes, Article 5421 (c) .....

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To the Honorable the Supreme Court of the United States:

Short Statement of the Case

This application is filed in connection with the Petition for Writ of Certiorari and Brief filed by the State of Texas in this Court in the case styled *State of Texas, Petitioner,* vs. *Alberto Balli, et al.,* Respondents, and it is based on the same record. The decision of the Supreme Court of Texas is reported as in 144 Tex. —, 190 S. W. (2d) 71. This petitioner, Hector Crandall, was a party to the proceedings in that case in the State Courts of Texas and the judgment of the Supreme Court of Texas denied him all relief prayed for (R. 386, 387). This petitioner's rights are entirely de-

pendent on the State of Texas' having title to Padre Island or a portion thereof. The petition for Writ of Certiorari and Brief filed by the State of Texas is here adopted as a part of this petition.

Prior to the trial of this case in the State Courts this petitioner filed an application with the Commissioner of the General Land Office of the State of Texas for an oil and gas lease from the State covering Padre Island (R. 399, 400). His application was made pursuant to and in compliance with Article 5421(c), Vernon's Annotated Texas Civil Statutes. The Land Commissioner refused his application with the advice that there was no vacancy involved in this case and refused to consider the same (R. 403, 404). In the Trial Court the State of Texas named this petitioner as a defendant Tr. 90 (R. 1) and this petitioner filed a cross action against the State praying that he be adjudged to have a preferential right to lease from the State for oil and gas development all of the said island and in the alternative, so much thereof as the State might recover in this cause. Tr. 91-112 (R. 2). The Trial Court rendered judgment against this petitioner (R. 65, 69) and a separate appeal was filed by this petitioner from said Judgment to the Court of Civil Appeals in San Antonio, Texas (R. 395, 396). The Court of Civil Appeals likewise rendered judgment against this petitioner (R. 254, 256) and this petitioner filed a Petition for Writ of Error to the Supreme Court of Texas which was granted (R. 393, 396). The Supreme Court of Texas rendered judgment against this petitioner on December 20, 1944 (R. 386, 387) and this petitioner's Motion for Rehearing was overruled by that Court on November 7, 1945 (R. 382). The Chief Justice of the Supreme Court of Texas has entered an order staying the issuance of the mandate pending the disposition of this case in this Court (R. 393). On petition by this petitioner,

Justice Hugo Black entered an order January 15, 1946, extending the time for filing this petition for Writ of Certiorari to April 3, 1946 (R. 410).

The rights of this petitioner to an oil and gas lease under the State law were never passed on by the Texas Courts. These Courts, including the Supreme Court of Texas, held that the State of Texas had no title to Padre Island or any part thereof and the question of the rights of this petitioner as lessee under the State were never reached or considered. In view of the fact that there are other applicants for an oil and gas lease from the State of Texas to Padre Island or the portion thereof owned by the State, who are likewise filing petitions for certiorari, it is considered that this phase of the case will have to be remanded to the State Courts, in the event this Honorable Court should hold that the State of Texas has title to Padre Island or any portion thereof.

This petitioner makes no independent claim to Padre Island but his rights are dependent solely on whether the State of Texas has title. This petitioner urges the State's title and the facts and the law in support thereof as presented in the petition and brief filed by the State of Texas. The land involved is a coastal island extending approximately 110 miles along the southeastern coast of Texas and separated from the mainland by the Laguna Madre. The island lies between the Nueces River and the Rio Grande and has never been used except for grazing purposes. There are no permanent homes on the island and very little evidence of life there (R. 122). Tropical hurricanes periodically sweep over the island from the Gulf of Mexico. In recent years, however, Padre Island has become very valuable because of the oil and gas deposits which are thought to underlie the island. There are no wells now on the island but there are several oil

fields on the mainland just across from the island between its northern tip at Corpus Christi, Texas, and its southern tip at Brownsville, Texas.

Basis of Jurisdiction

This Court has jurisdiction under Section 2, Article III of the Federal Constitution and Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A. Sec. 344, b) because,

The title of the State of Texas to Padre Island claimed under the first and second sections of a joint resolution of Congress of March 1, 1845 (5 Stat. at L. 797), being the Annexation Agreement between the United States and the Republic of Texas, is denied. Sections 1 and 2 of the joint resolution read as follows:

> "1. Resolved, by the Senate and house of Representatives of the United States of America in Congress assembled, That Congress doth consent, that the territory, properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.
>
> "2. And be it further resolved,—That the foregoing consent of Congress is given upon the following conditions, and *with the following guarantees*, to wit: First, Said State to be formed, subject to the adjustment by this government, of all questions of boundary that may arise with other governments; and the Constitution thereof with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight

hundred and forty-six. *Second, Said State, when admitted into the Union,* after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, arms and armaments, and all other property and means pertaining to the public defence belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing to the said Republic; *and shall also retain all the vacant and unappropriated lands lying within its limits,* to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States." Paschal's Dig., Laws of Texas, p. 44.

This proposal was accepted by the Republic of Texas by joint resolution of its Congress of June 23rd, 1845 (2 Gammel's Laws of Texas, 1225-1227, Paschal's Dig., Laws of Texas, p. 45, Sayles' Early Laws of Texas, Art. 1531), and by the People of the Republic by their deputies in a convention assembled for the purpose by an ordnance of July 4, 1845. (1 Gammel's Laws of Texas 1228-1230, Paschal's Dig., p. 45) The United States confirmed the agreement and admitted Texas into the Union on an equal footing with the original states in all respects, by a joint resolution of Congress of December 29, 1845. 9 Stat. at L. 108, Paschal's Dig., Laws of Texas, p. 46. The State of Texas asserted its ownership and control over said lands by joint resolution of its Legislature of April 29th, 1846. 2 Gammel's Laws of Texas, 1461, Paschal's Dig., Laws of Texas, Art. 441.[1]

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[1] The several joint resolutions forming the Annexation Agreement are all copied in full in the Appendix, pp. 18-26.

2. The judgment of the Supreme Court of Texas has misconstrued and misapplied the Treaty of Guadalupe-Hidalgo between the United States and Mexico, which was concluded on the 2nd day of February, 1848, by holding that it is applicable to the land in suit. The portions of the Treaty involved here read as follows;

"Article VIII

"Mexican *now established in territories previously belonging to Mexico,*[2] and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever. "Those who shall prefer to remain *in the said territories* may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States, but they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain *in the said territories* after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

"*In the said territories,* that property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States." 9, Stat. at L., 929, 930.

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[2] Land in Texas in 1848 previously belonged to the *Republic* of Texas, and was not "territories previously belonging to Mexico."

3. The Supreme Court of Texas has held invalid under Federal Law a statute of the State of Texas of August 15, 1870 (6 Gammel's Laws of Texas, 275, 378) which, under the undisputed facts in this case, would bar the respondents from asserting any right or title to Padre Island. The material portions of this Statute read as follows;

> "Section 1. Be it enacted by the Legislature of the State of Texas, That any person who may be the original grantee, heir, or legal assignee of any grant of land, emanating from the Spanish or Mexican governments, and having its origin previous to the nineteenth day of December, A. D. 1836, and situated between the Nueces and Rio Grande rivers, and below a line drawn from the northern boundary of Webb county to the mouth of the Moros creek, emptying into the Nueces river, may file a petition to the District Court of the county of Travis, or where the capitol of the State may be; which petition shall be filed at least ten days before the time of holding of said District Court, and shall contain a full description of the land claimed, setting forth particularly its situation, boundaries and extent, and shall accompany such petition with the titles or evidences of titles or right under which the same is held or claimed; and the said District Court shall investigate the same in accordance with the laws of nations, the laws, usages and customs of the government from which the claim is derived, and the principles of equity, so far as the same are applicable, and shall give judgment for the confirmation of the same when the title is perfect; and when imperfect, when the same could have been matured into a perfect title under the laws, usages and customs of the government under which it originated, had its sovereignty over the same not been passed to and been vested in the Republic of Texas; provided, said title or right was originally founded in good faith; and provided, that no service of such petition shall be necessary."

"Section 11. Be it further enacted, That all claimants under the act of February 10, 1852, and under the act of February 11, 1860 and all claimants to grants which may be confirmed by the courts under this act, shall have their land surveyed and the field notes returned to the General Land Office by the first day of January, A. D. 1875, or their claims shall be forever barred and such lands shall become part of the public domain of the State."[3]

5. The Supreme Court of Texas has held invalid under Federal Law Section 8 Article 14 of the Texas Constitution, which, under the undisputed facts of this case, would bar the respondents from asserting any right or title to Padre Island. This section of the Texas Constitution, which has not been amended since it was adopted in 1876, reads as follows:

"Persons residing between the Nueces River and the Rio Grande, and owning grants for lands which emanated from the government of Spain, or that of Mexico which grants have been recognized and validated by the State by acts of the Legislature, approved *February 10th, 1852, August 15th, 1870,* and other acts, and who have been prevented from complying with the *requirements of said acts* by the unsettled condition of the country, *shall be allowed until the first day of January 1880, to complete their surveys, and the plats thereof, and to return their field notes to the General Land Office; and all claimants failing to do so shall be forever barred;* provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons."

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[3] The predecessors in title of respondents were "claimants under the act of February 10, 1852" but they did not comply with this statute or with section 8, Article 14 of the Texas Constitution.

Questions Presented

The following Federal Questions are presented in this case:

I

Texas claims the title to 19 leagues (83,132 acres) on Padre Island as the successor to the Republic of Texas, which acquired title in 1836 from the Mexican State of Tamaulipas by virtue of the Texas Revolution. Texas entered the Union in 1845 under an Annexation Agreement between the United States and The Republic of Texas, to which Texas as a state and the people of Texas became parties. The respondents claim title to Padre Island by virtue of proceedings which Nicholas and Juan José Balli, their predecessors in title, had with the State of Tamaulipas, Mexico, in 1827-30, and by virtue of an act of the Texas Legislature in 1852 which confirmed to Nicolas Grisante and José Maria Tovar, also their predecessors in title, 11½ leagues in Cameron County, Texas, called "Padre Island."[4] The petitioner admits the confirmation act of 1852 but contends that, (1) the original title issued by the State of Tamaulipas in 1827-30 was void because it was not approved by the Chief Executive of Mexico as was required of all grants to lands lying within ten leagues of the coast. The respondents, therefore, have title only to 11½ leagues on the Island, the title to which was confirmed by the Texas Act of 1852. (2) Padre Island has since 1827-30 contained over 30 leagues of land and the National Colonization Law of Mexico of August 18, 1824, which governed the proceedings in 1827-30, limited the amount of land which could be granted to a single individual to six leagues. The grant to the Ballis, therefore, could not have been for

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[4] The portion of the Confirmation Act of 1852 applicable here is copied in the Appendix, pp. 26-27.

more than twelve leagues. (3) The title papers from the State of Tamaulipas, Mexico to the Ballis describe the land which the Ballis applied to purchase, which was surveyed for them and which was paid for by them, as 11.15 leagues of pasture land and not an entire island. This corresponds with the 11½ leagues of pasture land called "Padre Island," the title to which was confirmed by the Texas Legislature in 1852. The petitioner claims title to the balance of the Island, consisting of 19 leagues (83,132 acres) of flats, sand dunes and salty bays.

A. It is necessary for this Court to ascertain the quantity of land, if any, which was conveyed to the Ballis by the State of Tamaulipas, as evidenced by the several instruments included in the Instructive Dispatch, a complete copy of which is in the record (R. 131-177), in order to determine whether the Annexation Agreement applies to any part of Padre Island. Three members of the Supreme Court of Texas, who alone constituted the Court until it was enlarged by Constitutional amendment adopted on August 25, 1945, say that *only* 11.15 leagues on Padre Island were granted to the Ballis by the Mexican government. Six members of the Court, who were non-voting Commissioners appointed by the Court and not members of the Supreme Court at the time the original opinion was handed down, hold that the instruments in the Instructive Dispatch had the effect under the Mexican Law of conveying to the Ballis the whole of Padre Island, consisting of 30½ leagues (135,213 acres). If the dissenting opinions are correct, Texas is being deprived of 83,132 acres of land which she is entitled to under guarantees by the United States as expressed in the Annexation Agreement.

B. The question also arises as to the construction and application of the provisions of Mexican law which prohib-

ited the sale of land within ten leagues of the coast, without the previous approbation of the chief Executive of Mexico. Under this contention the "grant" would be void when issued regardless of the area called for but it was later validated to the extent of 11½ leagues by the Texas act of February 10, 1852 (copied, pp. 26-27 infra). These provisions were:

(1) Article 4, Decree 72, of the National Colonization Law of Mexico of August 18th, 1824 (1 Gammel's Laws of Texas, 39 Sayles' Early Laws of Texas, Article 40.) which provided:

> "There cannot be colonized any lands, comprehended within twenty leagues of the limits of any foreign nation, *nor within ten leagues of the coast*, without the previous approbation of the general supreme executive power."

(2) Article 11 of Colonization Law of Tamaulipas of December 15, 1826 (1 Gammel's Laws of Texas, 455, Sayles' Early Laws of Texas, Article 89) which provided:

> "Art. 11. In the same manner he shall take care that no town projected by foreigners be situated within ten leagues upon the coast of the Gulf of Mexico within the limits of the State, without previously obtaining the consent and approbation of the Supreme Executive of the Union. Beyond said line he shall also take care that, so far as the sites permit, the new towns be established in contact with the present ones, and with the conditions he stipulates with the empresarios."

C. The question also arises as to the construction and application of the laws of Mexico limiting the quantity of land which could be held by one individual. These provisions were,

(1) Art. 12, Decree No. 72, of the National Colonization Law of Mexico of August 18th, 1824, (1 Gammel's Laws of

Texas, 98, Sayles' Early Laws of Texas, Art. 40) which provided,

> "Art. 12. It shall not be permitted to unite in the same hands with the rights of property, more than one league square of land, suitable for irrigation, four square leagues in superfices, of arable land without the facilities of irrigation, and *six square leagues in superfices of grazing land.*"

(2) Article 25 of the Colonization Law of Tamaulipas of December 15, 1826 (1 Gammel's Laws of Texas, 458, Sayles' Early Laws of Texas, Art. 89) which provided:

> "Art. 25. The Chief executive shall convoke those born in the republic for the occupation of vacant lands, who shall be preferred to foreigners in the order of the older date of the designations, and, in case of equality, the natives or inhabitants of the place to which the land designated belongs, shall have the first place, those of places within the state the second, *and adjudication may be made up to the amount of one hundred and twenty-five million square varas.*"[5]

II

It is necessary for this Court to ascertain whether the Sovereign was entitled to accretions on the seashore under the Laws of Tamaulipas, Mexico, in order to determine whether the Annexation Agreement applies to this part of Padre Island. The majority opinion correctly holds "that the rights of the State and respondents must be determined in the light of the civil law in effect at the time of the grant as it existed in the State of Tamaulipas" (R. 394). If, under the Spanish Civil law, which was in force in Tamaulipas in 1827-30, the accretions on the seashore belonged to the sovereign, as stated by Mr. Justice Sharp in his dissenting opinion (R. 371-382),

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[5] Five leagues.

the accretions which have formed on Padre Island are "vacant and unappropriated lands" and belong to Texas under the Annexation Agreement. This is true, regardless of whether the so-called "grant" from the State of Tamaulipas to Nicholas and Juan José Balli included the whole of Padre Island or only 11.15 leagues of land on Padre Island.

III

The Supreme Court of Texas has misconstrued and misapplied the Treaty of Guadalupe-Hidalgo by holding that it is applicable to Padre Island. This Court in *Elisha Basse* vs, *City of Brownsville, Texas*, 154 U. S. 610, 22 L. Ed. 420, dismissed an application for a writ of error to the Supreme Court of Texas on the grounds that:

> "In McKinney vs. Saviego, 18 How., 240 (59 U. S. X. V. 367), it was decided that the Treaty of Guadalupe-Hidalgo had no relation to property included within the State of Texas."

IV

The Supreme Court of Texas misconstrued and misapplied the Treaty of Guadalupe-Hidalgo (1848), paragraph 2 of Article 6 of the Federal Constitution, and the Fourteenth Amendment to the Federal Constitution by holding, in effect, that, under their provisions, section 11 of the Texas Act of August 11, 1870 (Copied, p. 8 above) was invalid. The majority opinion (R. 317) mentions this statute in connection with the act of February 10, 1852, and Section 8 of Article 14 of the Texas Constitution and strikes the three down with one fell swoop. The majority opinion did not try to "construe" this act as it did the others, apparently because the meaning is too obvious, and it did not hold this act invalid under the Texas Constitution. The only grounds of inva-

lidity relied on by the Court are Federal grounds, and we must presume that the Court refused to apply and give effect to the statute for that reason only. This Statute was invoked and relied on by petitioner in exception to the admission of evidence in the trial court (R. 70, 72) and in the Court of Civil Appeals (R. 240, 395).

V

The Supreme Court of Texas misconstrued and misapplied the Treaty of Guadalupe-Hidalgo, paragraph 2 of Article 6 of the Federal Constitution, and the Fourteenth Amendment to the Federal Constitution by holding that, under their provisions, Section 8 of Article 14 of the Texas Constitution (copied, p. 8 above) cannot be enforced if its language is read in the sense in which it would ordinarily be understood and that it must be given a narrow and strained "construction" for that reason.

VI

The Supreme Court of Texas misconstrued and misapplied the Treaty of Guadalupe-Hidalgo, paragraph 2 of Article 6 of the Federal Constitution and the Fourteenth Amendment to the Federal Constitution by holding that Texas, by reason of these provisions, lacked the power to require by reasonable regulation, upon condition of forfeiture, that the claimants to Mexican or Spanish grants between the Nueces River and the Rio Grande, whose claims had been validated, complete their surveys and identify their lands within four years in order that the amount of public domain might be accurately ascertained.

Reasons for Granting the Writ

This is the first time this Court has been called upon to construe and apply the Annexation Agreement between the United States and the late Republic of Texas. The State of Texas has discharged all of its obligations to the United States under the Annexation Agreement. This is the first time that the State of Texas, as the successor to the Republic of Texas, has applied to this Court for help in retaining the public domain which the United States guaranteed to it under the terms of said Annexation Agreement.

This is the first time that the Supreme Court of Texas has held that Texas was not entitled under Mexican grants to accretions on the seashore. This ruling is of tremendous importance to Texas since most of its 380 mile coast is held under Civil Law grants which were issued before the Common law was adopted in 1840. This holding is not in accord with the holding of this Court in *Ker and Co.* v. *Couden*, 223 U. S. 268.

The holding of the Supreme Court of Texas that the previous approbation of the chief executive of Mexico was not necessary under Mexican Law to the validity of grants within ten leagues of the coast is not in accord with the holding of this Court in *Christy* v. *Pridgeon*, 71 U. S. 204, 8 Wall. 196.

The erroneous construction of the Balli grant in the majority opinion of the Supreme Court of Texas has the effect of including more land in the grant than was originally intended by the Mexican government and presents a federal question of substance by reason of the guarantees which the United States gave to the people of Texas in the Annexation Agreement. This holding is not in accord with the holding of this Court in *Ely's, Admr.* v. *United States*, 171 U. S. 220.

The Supreme Court of Texas has decided a federal question of substance by holding that the State of Texas was without power, under the Treaty of Guadalupe-Hidalgo and the Federal Constitution, to provide for a forfeiture of Mexican grants lying between the Nueces River and the Rio Grande where the claimants failed and refused, after their claim had been validated, to have their lands surveyed and to file their plats and field notes in the General Land Office of Texas. This holding is not in accord with the holding of this Court in *Barker* v. *Harvey,* 181 U. S. 481.

The holding of the Supreme Court of Texas that the Respondents were protected under the Treaty of Guadalupe-Hidalgo in their claims to Padre Island is in conflict with the holding of this Court in *Elisha Basse* v. *City of Brownsville, Texas,* 154 U. S. 610, 22 L. Ed. 420. The United States District Court for the Southern District of Texas has recently held in *Amaya et al.* v. *Stanolind Oil and Gas Co.,* 62 F. Supp. 181, that the Treaty of Guadalupe-Hidalgo is not applicable to land between the Nueces River and the Rio Grande, which land was in the former State of Tamaulipas, or to any land in the present State of Texas, on the basis of the holding of this Court in the *Basse* case. As this question of whether or not the federal treaty is applicable is of tremendous importance, particularly to the large ranchers in Texas whose titles, in many instances, are dependent solely on Mexican grants, the conflict between the holdings of the State Courts and Federal Courts on this point should be settled.

WHEREFORE, petitioner prays for a Writ of Certiorari to the Supreme Court of Texas, directing it to certify to this Court for review and determination the record and proceedings in Cause No. 8187, styled the *State of Texas et al., Petitioners* v. *Alberto Balli, et al., Respondents,* on

the docket of that Court and upon hearing that the judgment below be reversed and rendered in favor of the State of Texas and remanded as to this petitioner in order that his preferential right to an oil and gas lease from the State may be determined by the State Courts in accordance with local law but pursuant to this Court's judgment with reference to title to the land involved and this petitioner prays for such other relief to which he may be entitled and for the recovery of his costs.

Respectfully submitted,

W. C. FRANKLIN,
Counsel for Petitioner.

APPENDIX

1. The Annexation Agreement between the United States, the Republic of Texas, the People of Texas and the State of Texas consists of (1) a joint resolution of Congress of March 1, 1845 (5 Stat. at L. 797), (2) a joint resolution of the Congress of the Republic of Texas of June 23, 1845 (2 Gammel's Laws of Texas, 1225-1227; Paschal's Dig., Laws of Texas, Vol. 1, p. 45; Vol. 1 Sayles' Early Laws of Texas, Art. 1531), (3) an ordinance by the deputies of the People of the Republic of Texas in convention assembled on July 4, 1845 (2 Gammel's Laws of Texas, 1228-1230; Paschal's Dig. Laws of Texas, Vol. 1, p. 45), (4) a joint resolution of Congress of December 29, 1845 (9 Stat. at L. 108; Paschal's Dig., Laws of Texas, Vol. 1, p. 46) and (5) a joint resolution of the Texas Legislature of April 26th, 1846. 2 Gammel's Laws of Texas, 1461; Paschal's Dig., Laws of Texas, Art. 441. These several laws are copied in the order above listed on pages 18-26.

2. Texas Act of February 10, 1852, pp. 26-27.

Joint Resolution for Annexing Texas to the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, towit: First, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evi-

dence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-sixe. Second. Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated land lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States. Third. New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime) shall be prohibited.

3. And be it further resolved, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries,

and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct. Approved March 1, 1845. 5 Stat. at L. 797, 798.

Joint Resolution

Giving the Consent of the Existing Government to the Annexation of Texas to the United States

Whereas, the Government of the United States hath proposed the following terms, guarantees, and conditions, on which the people and territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, and admitted as one of the States of the American Union, to wit:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of Government, to be adopted by the people of said Republic, by deputies in Convention assembled, with the consent of the existing Government, in order that the same may be admitted as one of the States of this Union.

"2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit:

"First. Said State to be formed, subject to the adjustment by this Government of all questions of boundary that

may arise with other governments; and the Constitution thereof, with the proper evidence of its adoption, by the people of the said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six.

"Second. Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yard, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence, belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States.

"Third. New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime), shall be prohibited."

And whereas, by said terms, the consent of the existing government of Texas is required—Therefore,

Be it resolved by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That the

government of Texas doth consent, that the People and territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of Government, to be adopted by the people of said republic, by Deputies in Convention assembled, in order that the same may be admitted as one of the States of the American Union; and said consent is given on the terms, guarantees, and conditions set forth in the Preamble of this Joint Resolution.

Sec. 2. Be it further resolved, That the proclamation of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of Deputies to sit in Convention at Austin, on the fourth day of July next, for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing Government of Texas.

Sec. 3. Be it further resolved, That the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited Minister near this Government, with a copy of this Joint Resolution; also to furnish the Convention to assemble at Austin, on the fourth of July next, a copy of the same—And the same shall take effect from and after its passage.

JOHN M. LEWIS,
Speaker of the House of Representatives.
K. L. ANDERSON,
President of the Senate.

Approved, June 23, 1845. Anson Jones.

2 Gammel's Laws of Texas, 1225-1227.

IN CONVENTION OF THE PEOPLE OF THE REPUBLIC OF TEXAS
JULY 4, 1845

An Ordinance

Whereas the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were approved by the President of the United States on the first day of March one thousand eight hundred and forty-five; and whereas the President of the United States has submitted to Texas

the first and second sections of the said resolution, as the basis upon which Texas may be admitted as one of the States of the said Union; and whereas the existing government of the Republic of Texas has assented to the proposals thus made, the terms and conditions of which are as follows,

Joint Resolution for Annexing Texas to the United States

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent, that the territory, properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. And be it further resolved, that the foregoing consent of Congress is given upon the following conditions, and with the following guaranties, to wit: First. Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said republic of Texas, shall be transmitted to the president of the United States, to be laid before congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. Second. Said state, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to the said republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing to said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said republic of Texas, and the residue of said lands, after discharging said debts and liabili-

ties, to be disposed of as said state may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States. Third. New states, of convenient size, not exceeding four in number, in addition to said state of Texas, and having sufficient population, may hereafter, by the consent of said state, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such states as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union, with or without slavery, as the people of each state asking admission may desire. And in such state or states as shall be formed out of said territory north of said Missouri compromise line, slavery or involuntary servitude (except for crime), shall be prohibited.

Now, in order to manifest the assent of the people of this republic, as required in the above-recited portions of the said resolutions, We, the deputies of the people of Texas in convention assembled, in their name and by their authority, do ordain and declare, that we assent to, and accept the proposals, conditions, and guaranties contained in the first and second sections of the resolution of the congress of the United States aforesaid.

Done at the city of Austin, Republic of Texas, July 4th, 1845.

THO. J. RUSK,
President.

Paschal's Anno. Digest, Laws of Texas, pp. 44, 45; Vol. 2 Gammel's Laws of Texas, pp. 1228-1230.

JOINT RESOLUTION OF THE CONGRESS OF THE UNITED STATES ADMITTING TEXAS INTO THE UNION

Whereas, the congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belonging to, the republic of Texas, might be erected into a new state, to be called the state of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in con-

vention assembled, with the consent of the existing government, in order that the same might be admitted as one of the states of the Union, which consent of congress was given upon certain conditions specified in the first and second sections of said joint resolution: and whereas, the people of the said republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a constitution, and erect a new state with a republican form of government, and in the name of the people of Texas, and by their authority, did ordain and declare that they assented to, and accepted the proposals, conditions, and guaranties contained in said first and second sections of said resolution: and whereas, the said constitution, with the proper evidence of its adoption by the people of the republic of Texas, has been transmitted to the president of the United States and laid before congress, in conformity to the provisions of said joint resolution: therefore,

Resolved, by the senate and house of representatives of the United States of America, in congress assembled, That the state of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever.

Sec. 2. And be it further resolved, That until the representatives in congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the state of Texas shall be entitled to choose two representatives. Approved December 29, 1845. Paschal's Digest, Laws of Texas, Vol. 1, p. 46. 9 Stat. at L. 108.

JOINT RESOLUTION OF APRIL 26, 1846, DECLARING THE EXCLUSIVE RIGHT OF THE STATE OF TEXAS TO THE JURISDICTION OVER THE SOIL INCLUDED WITHIN THE LIMITS THEREOF.

Art. 441. (1634) [1.] That the exclusive right to the jurisdiction over the soil included in the limits of the late republic of Texas, was acquired by the valor of the people thereof, and was by them vested in the government of the said republic; that such exclusive right is now vested in and belongs to the state, excepting such jurisdiction as is

vested in the United States, by the constitution of the United States, and by the joint resolution of annexation, subject to such regulations and control as the government thereof may deem expedient to adopt; that we recognize no title in the Indian tribes, resident within the limits of the state, to any portion of the soil thereof; and that we recognize no right in the government of the United States to make any treaty of limits with the said Indian tribes, without the consent of the government of this state. Paschal's Ann. Digest, Laws of Texas, Vol. 1, pp. 192, 193.

AN ACT TO RELINQUISH THE RIGHT OF THE STATE TO CERTAIN LANDS THEREIN NAMED, APPROVED FEBRUARY 10, 1852, THE PERTINENT PORTIONS OF WHICH READ AS FOLLOWS:

"Section 1. Be it enacted by the Legislature of the State of Texas, That the State of Texas hereby relinquishes all her right and interest in the following described lands to the original grantees thereof, their heirs and legal assigns, towit:

County of Cameron

"(12) Nicolas Balli and Juan José Balli, eleven and a half leagues called 'Padre Island':

"Sec. 2. That it shall be the duty of those claiming any of the lands named in this act, to have the same surveyed by the District or County Surveyor of the County in which the same may be situated, and upon the return of the field notes thereof, to the General Land Office, the Commissioner is hereby authorized and required to have the same plotted on the maps of his office, and issue patents for the same in accordance with existing laws; provided, that no patent shall issue for a less amount than the original grant. That the owners of said lands shall be required to pay the taxes due on the same, from the date of the organization of the respective counties herein mentioned; which taxes shall be paid, and legal vouchers for the same exhibited to the Commissioner of the General Land Office, before the patent to the same shall issue."

"Sec. 5. That the confirmation herein extended to the lands mentioned in this act, shall in no way be construed

to interfere with any rights which may have accrued to other parties before the passage of this act, but the same shall remain without prejudice; provided, that nothing in this act shall be so construed as to relinquish the rights of the State to any of the Islands or Salt Lakes situated in the territory embraced in this act." 3 Gammel's Laws of Texas, 941, 946 and 949.